UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 29

BEDFORD STUYVESANT RESTORATION CORPORATION, RDC OF BEDFORD STUYVESANT, RDC COMMERCIAL CENTER, and CDR MANAGEMENT CORPORATION, A Single Employer

Employer

and **Case No. 29-RC-9398**

LOCAL 966, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, AFL-CIO

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, herein called the Act, as amended, a hearing was held before Amy Gladstone, a Hearing Officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The Hearing Officer's rulings made at the hearing are free from prejudicial error and hereby are affirmed.

2. The Petitioner seeks an election in a unit of building service employees employed at approximately 23 apartment buildings and a commercial center located in the Bedford Stuyvesant community of Brooklyn, New York. It

contends that Bedford Stuyvesant Restoration Corporation (Restoration) and CDR Management (CDR) are either joint employers or a single employer of the employees it seeks to represent. Restoration maintains that neither it nor CDR is an employer of any of the employees in question. Rather, it appears to contend that the sole employers of the employees employed at the apartment buildings are the seven "housing companies" that own them. With regard to the employees employed at the commercial center, it asserts that RDC Commercial Center, Inc. (RDCCC) is their sole employer.

The record shows that Restoration, a not-for profit corporation, with its principal office and place of business located at 1360 Fulton Street, is engaged in various community development activities within the neighborhood of Bedford Stuyvesant in Brooklyn, New York. These activities include, inter alia, overseeing the management, through its subsidiaries, of both the commercial center and various apartment buildings.

The record shows that RDCCC is the managing agent of the commercial center. The Employer's organizational charts indicate that RDCCC is a division of Restoration, and two management plans submitted into evidence indicate that Restoration is the sole owner of RDCCC.

With respect to the apartment buildings, the record shows that they are owned by the seven housing companies, each of which holds title to at least one building. The names of these companies, and the properties they own, is set forth in Appendix A. It appears that four or five of the companies are housing development fund corporations (HDFCs) and the remaining two or three are

limited partnerships (LPs). Each of the HDFCs are not for profit wholly owned subsidiaries of Restoration. With regard to the LPs, the record shows that Restoration, through RDC of Bedford Stuyvesant (RDCBS), its wholly owned subsidiary, is their managing general partner and owns an equity interest in each LP. Thus, the record shows that Restoration is either the parent company or the managing partner of each of the housing companies. Moreover, although the Employer's counsel contends that the housing companies are the sole employers of the apartment building employees, it concedes that in and of themselves, they play no role in the management of these properties.

Rather, the record shows that CDR Management Corporation (CDR) is the managing agent for each of these apartment buildings and is largely responsible for the supervision of the employees who service them. Dorothy Hill, CDR's President, testified that prior to about 1994, Restoration subcontracted out the management of these properties to various independent management companies, such as Shinda Management and BPC Management. She stated that Restoration receives federal financing for the management of these buildings, and as a condition of providing this financing, the government holds Restoration to various reporting requirements. Partly because the management companies were not providing Restoration with the information it needed to meet these requirements, it decided to bring the management of its apartment buildings "inhouse" and formed CDR to perform this function. CDR's office is located on 20 New York Avenue, across the street from Restoration. The Employer's counsel conceded that Restoration is the sole shareholder of CDR.

Other exhibits submitted into evidence indicate that RDCCC, the managing agent for the commercial center, is the parent company of CDR and that RDCCC, in turn, is owned by Restoration.

Thus, the record shows that Restoration is the sole owner of RDCCC, that it is the sole shareholder or managing partner of each of the housing companies, and that it fully owns CDR, the managing agent these companies use to maintain the apartment buildings. One of the organizational charts submitted into evidence lists each of these entities as falling under Restoration's asset management division. Another organizational chart that appears in an employee handbook lists these entities as subsidiaries of Restoration.

The record further shows that Restoration and CDR are, at least in part, commonly managed. Dorothy Hill, CDR's President, is also Restoration's Senior Vice President and is responsible for overseeing its asset management division which, as earlier noted, includes both the commercial center and the apartment buildings. In both these capacities she reports to Roderick Mitchell, Restoration's President and the chairman of CDR's Board of Directors. Horace Aiken, CDR's Treasurer, is the Chief Financial Officer of Restoration. Clarence Stewart, the Vice President of CDR's Board of Directors, holds a position with RDCBS, and Wadiyah Latif, its Secretary, is an officer of RDCCC.

With regard to labor relations, the record shows that Restoration, CDR, and RDCCC play interrelated roles in determining the working conditions of the petitioned-for employees. As earlier noted, Hill, who is an officer of both Restoration and CDR, is responsible for overseeing Restoration's entire asset

management division, and it appears that supervisors from both CDR and RDCCC ultimately report to her.

With regard to the commercial center, it appears that with respect to at least some of the employees the Petitioner seeks to represent, RDCCC is partly responsible for supervising their day to day duties. As will be discussed in further detail later in this Decision, the commercial center is staffed by "maintenance" employees (i.e., porters, an engineer, handymen, and an HVAC employee) "construction" employees and "trainees." Roy Fraser, the facility manager for the commercial center and a stipulated Section 2 (11) supervisor, identified himself as an agent of RDCCC and testified that he is responsible for directing the work of both the construction employees and maintenance workers. [1] However, it appears that Fraser ultimately reports to Hill. During his testimony, he stated that he obtained Hill's authorization for the hiring of Florencio DeJesus, one of the employees employed at the commercial center.

With respect to the "trainees" at the commercial center, the record shows that Restoration's Personnel Director, Judith Anglin, plays a role in interviewing and hiring them. Ricky Starks, their direct supervisor, identified himself as an agent of Restoration.[2] It appears from Hill's testimony that inasmuch as she does not see trainees as falling under Restoration's asset management division

[1] I find the stipulation regarding Fraser's 2(11) status is supported by the evidence and that he is a supervisor within the meaning of the Act. It is noted that although Fraser stated he was an agent of RDCCC, and he appears on RDCCC's payroll, his business card named Restoration as his employer.
[2] At the commencement of the hearing, the parties stipulated that Starks is a supervisor within the meaning of the Act. As is the case with Fraser, I find that the stipulation regarding Starks' supervisory status is supported by the evidence and will exclude him from the unit.

(which includes CDR, RDCCC, and the housing companies), she views them as employees of Restoration rather than as employees of CDR or RDCCC.

With regard to the employees working at the apartment buildings, there does not appear to be any dispute that CDR is largely responsible for their supervision. The apartment buildings are managed pursuant to a management plan, and CDR utilizes a separate management plan for each housing company. The plans are largely identical, and set forth in detail the responsibilities of the superintendents, porters and handymen employed at the buildings. Four property managers employed by CDR, all stipulated supervisors, are responsible for overseeing the work of these employees on a day to day basis. Dwayne Oliver, a porter at 2840 McDonough Street, one of the apartment buildings, testified that Hill (CDR's President and Restorations Senior Vice President of Operations) interviewed and hired him. Hill testified that she is responsible for setting the salaries of the employees working at the apartment buildings. She further stated that she has independently disciplined apartment building employees.

Although CDR and RDCCC play a significant role in both setting and implementing labor relations policies at both the apartment buildings and the commercial center, the record reveals that they often work in conjunction with their parent company (Restoration) in performing these functions.

An employee handbook, produced by Restoration, has been distributed to at least some building service employees, and the parties stipulated that this handbook is "applicable" to all the petitioned for employees. The handbook,

which begins, “This employees handbook is a guide for employees of the Bedford Stuyvesant Restoration Corporation…” sets forth in detail Restoration’s policies regarding rules of conduct, wages, hours, and various fringe benefits such as vacations, holidays, sick leave, bereavement leave, severance pay, and employee pensions.

With regard to such matters as hiring, firing and evaluations, since neither CDR nor RDCCC appear to have their own personnel department, they are largely dependent upon that of Restoration in carrying out these functions. At the commercial buildings, Restoration’s Director of Personnel (Anglin) has interviewed and hired employees in the “Return to the World of Work” program. She has also participated in the hiring of employees employed at the apartment buildings.[3] Property Manager Wayne Thomas testified that Anglin is often consulted regarding discipline. He further asserted that her recommendations are always followed. Property Manager Annette Holder testified that Anglin and Hill met with an apartment building employee to inform him that he had been terminated. Hill conceded that Anglin “oversees” the disciplinary process. The record further shows that at Hill’s request, Anglin recently directed the property managers at the apartment buildings to begin preparing written evaluations of the apartment building employees.

On what may be a more ministerial level, Anglin is one of the individuals required to approve and execute “Personnel Change Authorization” forms for employees at both the apartment buildings and commercial center who are

[3] Reginald Tinnin, a porter at one of the apartment buildings, testified that he was interviewed by Anglin and his property manager, Wayne Thomas.

changing positions. When employees are being transferred, Anglin is notified by memo.

It appears that Restoration is also partly responsible for administering the payrolls of both CDR and RDCCC. With respect to CDR, a separate budget and payroll is maintained for each housing company. Employee time sheets and time cards are initially tabulated by CDR and are then sent to Restoration for further processing. ADP is responsible for generating the final paycheck. Although separate payrolls are maintained for each housing entity, and each such entity has its own budget, the paychecks for both apartment building and commercial building employees only name Restoration as their employer. The identification badges generally worn by employees of both the apartment buildings and the commercial center designate Restoration and the department, program or subsidiary of Restoration for which they work (i.e., CDR, Return to the World of Work, etc.) as the employers of these individuals.

The record further shows that Restoration, CDR, and RDCCC regularly interchange employees. As will be discussed in further detail during the examination of the appropriateness of the unit, trainees at the commercial center, who as earlier noted would appear, ostensibly, to be employees of Restoration, are placed in available positions at both the housing companies (or CDR) and the commercial center (or RDCCC) upon graduating from the training program.

Moreover, there is frequent interchange among the employees at the buildings owned by the different housing companies.[4]

Further evidence of the interrelated operations of these entities is the monthly meetings Restoration generally holds at the commercial center. The maintenance employees from both the commercial center and the housing companies are required to attend.

Although the terms "single employer" and "joint employer" are occasionally confused, they are distinct concepts. A joint employer relationship occurs when two or more truly independent entities jointly determine matters concerning the terms and conditions of employment of a group of employees. On the other hand, a single employer relationship exists when two or more *ostensibly* different entities are so closely integrated, with common ownership and interrelated operations, that they are, in fact, a single enterprise. NLRB v. Browning-Ferris Industries, 691 F.2d 1117, 111 LRRM 2748, 2751-2752 (1982); Fairhaven Properties, Inc., et. al., 314 NLRB 763 at n.2 (1994). In determining whether nominally separate entities constitute a single employer, the Board examines the extent of common ownership, common management, centralized control of labor relations and the integration of operations. The most important of these criteria is centralized control over labor relations. Applying these factors to the instant case, I find that the evidence clearly establishes that Restoration, CDR, RDCCC, RDCBS and the housing companies set forth in Appendix A are a single integrated enterprise.

[4] For the sake of economy, these employees will occasionally be referred to as housing company employees.

The organizational charts, testimony and other exhibits show that Restoration is the sole owner of CDR, RDCCC and most of the housing companies and that it owns an equity interest and is the managing partner of the two or three housing companies that are LPs. They share several common officers and utilize the same employee handbook and same personnel department. Besides helping administer the payroll and benefits, the Personnel Director appears to play a role in labor relations matters affecting employees of each of these putatively separate entities. Employees at both the apartment buildings and the commercial center are paid with checks, and carry identification badges, that name Restoration as their employer. Supervisors at CDR, RDCCC and Restoration report to Hill (the Senior Vice President of Restoration and President of CDR) concerning labor relations matters, and she appears to have the ultimate say over major personnel matters at each entity. Accordingly, I find that Restoration, the housing companies set forth in Appendix A, CDR, RDCCC, and RDCBS constitute a single employer as that term is defined by the Board. Alexander Bistritzky, 323 NLRB 524 (1997).

The parties stipulated that Restoration met the Board's discretionary standards for the assertion of jurisdiction. Specifically, they stipulated that during the past year, which period is representative of its annual operations generally, Restoration, in the course and conduct of its business operations, derived gross annual revenues in excess of $500,000, and purchased and received at its New York facilities fuel, goods, supplies and materials valued in excess of $5,000 from various entities located outside the State of New York. Insofar as I have

determined that Restoration, CDR, RDCCC and the housing companies, herein collectively called the Employer, are a single employer, and the parties stipulated that Restoration is engaged in interstate commerce, I find it unnecessary to determine whether each entity separately meets the Board's standards for the assertion of jurisdiction. CID-SAM Management Corp. and AL-ED Management Corp., 315 NLRB 1256 (1995). Accordingly, based upon the stipulations of the parties and the record as a whole, I find the Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.[5]

3. The labor organization involved herein claims to represent certain employees.

4. A question affecting commerce exists concerning the representation of certain employees.

5. As earlier noted, the Petitioner seeks an election in a unit of all building service employees employed at the commercial center and the aforesaid apartment buildings (housing companies). With regard to the commercial center, this includes approximately 8 regular "maintenance" employees (housekeeping employees, porters, an HVAC engineer, and other individuals who either function as porters or handymen), approximately 5

[5] The Employer's counsel objected to the Petitioner's motion to amend its petition to name CDR as a joint employer asserting that CDR had not been given adequate notice of these proceedings. He also stated that he would object to any motion to name the housing companies as employers for the same reason. Inasmuch as I have found that these entities, along with Restoration, constitute a single employer, and there is no contention that Restoration was not provided with ample notice of these proceedings, I find this argument to be without merit.

"construction" employees, and 5 or 6 employees in the Employer's "Return to the World of Work" program.

At the housing companies, the petitioned-for unit consists of approximately 30 employees: 9 superintendents, two painters, 14 porters, and about 5 handymen. Thus, in total, there are approximately 50 employees in the petitioned for unit.

The Employer contends that the petitioned-for unit is inappropriate. It maintains that the only appropriate units are two sets of separate units.

One of these sets is composed of 8 separate units, one unit for employees of each housing company and one unit for employees employed at the commercial center.

The Employer's alternate proposal is not clear from the record, as the Employer maintains that the units could be divided according to which employees work with which superintendents. However, since the Employer is also maintaining that the superintendents are statutory supervisors, some superintendents work alone, and one of them works with just one employee, it is not clear how the housing company employees would be grouped under this proposal. Under this approach, as under its first proposal, the remaining unit would be composed of commercial center employees.

As noted above, the Employer maintains that the superintendents are statutory supervisors and should be excluded from any unit found appropriate. It further contends that the employees employed in the Return to the World of Work program are temporary employees who lack a community of interest with

the remaining employees in the petitioned-for unit. In addition, the Employer maintains that Florencio DeJesus, one of the employees employed at the commercial center, is a temporary employee who should be excluded from the unit. The Petitioner contends that the both the Return to the World of Work trainees and DeJesus are permanent employees who share a sufficient community of interest with the other petitioned-for employees to warrant their inclusion in the unit, and that the superintendents are employees under the Act.

The scope of the unit

As discussed earlier, the petitioned-for unit consists of approximately 30 maintenance employees employed at the housing companies (apartment buildings) and 20 employees employed at the commercial center. These properties are all located within the neighborhood of Bedford Stuyvesant, and it appears that no two buildings are more than a mile apart.

There is a limited history of collective bargaining involving employees employed at three of the housing companies. In the late 1980s, Local 32B-32J, Service Employees International Union, AFL-CIO (Local 32B) represented the maintenance employees employed at the buildings owned by one of the housing companies, Vernon Avenue Houses. In the early to mid 1990s, Local 32B represented a unit consisting of employees employed at two other housing companies, BSR Housing and Greene Avenue Houses. It is not clear how these relationships ended. The Petitioner currently represents a unit of maintenance employees employed at another housing company not covered by this petition.

The employees working at the housing companies consist of superintendents, porters, handymen and painters. The duties of the porters consist of mopping and buffing the floors, sweeping the premises, rubbish disposal and clearing out vacant apartments. They generally work a set routine, and take little, if any, direction from their superintendent or property manager. The handymen perform minor repairs, such as fixing leaking faucets and unclogging sinks and toilets. It appears that the repairs are usually set forth in written work orders prepared by the tenants and occasionally handed to them by the superintendents. The two painters work at one of the housing companies, Vernon Avenue Houses, and apart from the fact that they paint, the record did not reveal any information regarding their working conditions. The duties of the superintendents include both cleaning and minor repairs. Although, as will be discussed shortly, they have limited purchasing authority, and the responsibilities of one of the superintendents, James Coleman, are somewhat greater than those of the others, it appears that the duties of the superintendents, porters and handymen are fairly uniform throughout the housing companies.

The housing company employees are directly supervised by 4 property managers. It appears that one of these managers, Arthur Watkins, is responsible for overseeing the employees at 3 housing companies. Property managers set employee schedules, temporarily transfer employees to different buildings within the companies they manage and issue disciplinary warnings. However, as set forth earlier, all decisions regarding major discipline are made

by Hill who often works in conjunction with Personnel Director Anglin. Similarly, it appears that all hiring is done by Hill and Anglin.

Employee salaries throughout the housing companies are set by Hill. Fringe benefits and work rules are set forth in the employee handbook discussed earlier, and are uniform throughout the housing companies. It appears that all housing company employees wear a dark blue uniform and a hat with the word "Restoration" written on it. Their uniforms may also name the individual housing company that owns the property.

Interchange, both permanent and temporary, is frequent among employees employed at the different housing companies. Over the last few years at least 16 of them have been transferred among housing companies on a temporary or permanent basis.[6] At least four of these transfers occurred during the four months preceding the hearing. Although several of the above described transfers were permanent, and some had occurred over a year prior to the hearing, it is clear that several of the long term employees have worked at more than one location during the course of their employment.

The 8 maintenance employees at the commercial center are directly supervised by Fraser. The responsibilities of the two or three porters/maids appear to largely mirror those of the porters at the housing companies. Similarly, the duties of two or three of the maintenance employees in many ways

[6] I am aware that several of the transferred employees are superintendents, who the Employer contends should be excluded from the unit as Section 2(11) supervisors. However, inasmuch as I have found the superintendents to be statutory employees, it is permissible to consider transfers involving superintendents in resolving this issue. It is noted that much of the evidence concerning employee transfers came in the form of testimony from the Petitioner's witnesses. It is likely that had the Employer culled from its payroll records all the examples of employee interchange, the number of transfers disclosed would have been greater.

mirror those of the handymen employed at the housing companies. However, some are also given their own special assignments, e.g. preparing the facility for special events.

Fraser also supervises the commercial center's "construction" employees. The duties of these employees include masonry, plastering and painting. They do not appear to work with either the maintenance employees employed at the commercial center or the housing company employees, and there is no evidence of interchange among the construction employees and the other employees the Petitioner seeks to represent.

The hours worked by the construction employees vary according to the project they are working on. They earn an average of $10.00 per hour and do not enjoy any fringe benefits. They generally work a 40 hour week, and are assigned overtime work when the project requires it. The maintenance employees are paid an average of $8.00 to $9.00 per hour, although it appears that some, such as the HVAC engineer, earn over twice that amount. It appears that they receive the fringe benefits set forth in the employee handbook. However, unlike the construction employees, they are not assigned overtime work, and generally work no more than 35 hours per week.

With respect to the Return to the World of Work trainees employed at the commercial center, their working conditions will be described in greater detail later in this Decision. However, their training program initially consists of classes, in which they learn many of the skills utilized by the construction employees, and hands on work, which consists of both cleaning and

"construction" work. There is evidence that they have, at times, worked alongside the maintenance employees and commercial employees, and those who successfully complete the program are placed in positions at both the housing companies and the commercial center.

It is well established that a petitioned-for unit, to be certifiable under Section 9 of the Act, need not be the most appropriate unit. Rather, it need only be an appropriate unit. Morand Bros. Beverage Co., 91 NLRB 409 (1950). Among the factors considered by the Board in making unit determinations in a multilocation situation are the geographical separation of the facilities involved,[7] centralized control over labor relations,[8] supervision, the nature of the work being performed at the different locations,[9] and employee interchange.[10]

An examination of each of these factors supports the conclusion that the multi-location unit sought by the Petitioner is appropriate. Geographically, the buildings at which the petitioned-for employees work are closely grouped together in the community of Bedford Stuyvesant. Many of the factors that supported the finding that the above-captioned entities along with the housing companies constitute a single employer also establish that a multi-location unit is appropriate. Interchange among the employees at the different housing companies is substantial. Although there is little if any interchange among housing company employees and the maintenance and construction employees employed at the commercial center, the trainees at the commercial center are

[7] Neodata Product/Distribution, Inc., 312 NLRB 987 (1993).
[8] Purity Supreme, Inc., 197 NLRB 915 (1972).
[9] Cheney Bigelow Wire Works, 197 NLRB 1279 (1972).
[10] Carter Camera Shops, 130 NLRB 276 (1961).

often placed in positions at the housing companies.[11] Ultimate control over all labor relations matters, including hiring, firing and employee wages is vested in Hill with respect to the housing company employees, and it appears that at least some major personnel actions at the commercial center (i.e. the decision to re-employ DeJesus) are also cleared with Hill. There is one employee handbook and one personnel department. The work performed by the maintenance employees at the commercial center and those employed at the housing companies is similar.

I thus find that insofar as petitioned-for unit includes employees employed at the various housing companies and the commercial center, it is appropriate for the purposes of collective bargaining.

The Return to the World of Work Trainees

The Employer maintains that the four to six employees in the Return to the World of Work program are temporary employees who lack a sufficient community of interest with other employees to warrant their inclusion in the unit.[12] The Petitioner contends that they are all permanent employees whose placement in the unit is warranted.

The Return to the World of Work program is a training program, apparently government funded, that is designed to integrate chronically unemployed adults into the work force. The testimony of the Employer's witnesses differed as to the usual length of the program. Ricky Starks, the

---

[11] As will be discussed further infra, I find that it is appropriate to include the trainees in the unit.
[12] The parties could not agree as to whether Florencio DeJesus and Marty Hampton should still be considered trainees.

supervisor of the Return to the World of Work employees, testified that the program lasts from 26 to 40 weeks. Fraser asserted that the program runs in 12 week and 26 week cycles. The temporary requisition forms submitted into evidence stated that the disputed employees' employment would last from January 4, 1999 to June 30, 1999. All of them have worked since January, 1999, and at the time of the hearing they were still employed. The testimony of the Employer's witnesses and those of the Petitioner differed slightly as to what trainees are told when they are hired. Starks stated that trainees are informed that if they are successful, they will be screened for a permanent position, and that he tells those who do very well that there is a strong possibility they will be placed in such positions. Trainee Roger Harvey stated that Personnel Director Anglin told him that he would be given a permanent position after six months of employment. Marty Hampton testified that he was informed that if he successfully completed the program, he would be given a full-time position.

The first few months of the program consist of a combination of classes and work. The classes cover such subjects as carpentry, plumbing, masonry and sheetrocking. Trainees are periodically tested on these skills. Trainees are also given hands on work in these areas as well as cleaning assignments, such as sweeping, mopping and garbage disposal. It appears from the record that the classes concerning these skills ended several months ago. It further appears that in the past, trainees, or at least some of them, have, at times,

worked with both maintenance employees and construction employees at the commercial center as part of their training.[13]

The base of operations for the trainees is 1368 Fulton Street. Maintenance employees work out of the building on 1360 Fulton Street. However, both work a 7 hour day and most of them take lunch at the same time. In contrast to the construction and maintenance employees working at the commercial center, who sign in, the trainees are required to both sign in and punch a time card. However, for the last few months, one of the trainees, Marty Hampton, has not been required to punch a time card. Trainees are paid $7.00 per hour and do not appear to enjoy any fringe benefits.

Although the trainees have been employed for approximately a year, most have not been placed in any permanent positions. However, in the past, several trainees have been given permanent positions at both the commercial center and the housing companies. Starks testified that approximately 25% of the trainees who enter the Return to the World of Work program successfully complete it. He asserted that trainee Zachary Oliver's chances of receiving a permanent position are "very slim" due to disciplinary problems he has experienced. However, he asserted that the chances that Edwards would be placed are "better than 50-50." He maintained that the prognosis for Roger Harvey is "good" and employment prospects for Vance Wilson and Marty Hampton are "excellent." In part, he attributed the failure to place the trainees in permanent positions to their lack of skill. However, the position of porter, in

[13] Starks asserted that trainees generally do not work with the construction and maintenance employees. However, Fraser, Hampton and Harvey testified that trainees have worked alongside these employees as

which several trainees have been placed in the past, does not appear to be a skilled position.

Moreover, the Employer appears to regard one of the trainees, Hampton, as a skilled employee. Athough he still earns an hourly wage of $7.00, in about late February or March 1999, he was made a mentor for the other trainees. He was given the key to one of the areas used by the trainees, would retrieve the tools, show his fellow trainees where they would be working, and would oversee their work. As earlier noted, for the last few months Hampton has worked with other maintenance employees and he has not been required to punch a time card. He asserted that he was recently assured that he would be given a permanent position.

Harvey also asserted that various officials of the Employer assured him that he would soon be placed in a permanent position. Hill asserted that the Return to Work program is scheduled to end December 31, 1999, a week from the close of the hearing. She asserted that *if* there were no permanent positions available when the program ended, those who had not successfully completed the program would be terminated. However, she did not appear to know what slots, if any, were available and did not speculate on the fate that would befall the current trainees if they were successful *and* there were no permanent positions available. The Employer's counsel further admitted that Hill was not responsible for the administration of the Return to the World of Work program. Hampton asserted that he had been informed that the reason he had been kept in the program for more than six months was the lack of permanent positions.

---

part of their training. Tr. 197, 707-708, 807-808.

Thus, it appears that in the past its been the Employer's policy to find a way to extend the program when there are no positions available on its termination date.

In the past, the Board has determined the eligibility of individuals working in programs designed to reintegrate them into the work force through an examination of their community of interest with unit employees. In Mon Valley United Health Services, Inc., 238 NLRB 916, 925-926, the Board found that employees working in the Manpower Program, "a federally funded program designed to stimulate employment among unemployed and underemployed individuals by involving them in an on the job training program," shared a sufficient community of interest with other employees to warrant their inclusion in the unit. With these employees, as with those in the instant case, the employer's ultimate goal was to integrate them into its regular work force. The Board has since evaluated the eligibility of similarly situated employees utilizing traditional community of interest criteria. Evergreen Legal Services, 246 NLRB 964 (1979) (CETA employees included in the unit); Speedrack Products Group Limited, 325 NLRB No. 109 (1998) (Work release employees included in the unit.) The Board weighs arguments that such individuals are temporary employees under the same standards it uses to examine the eligibility of other allegedly temporary employees.

With regard to temporary employees in general, the Board has found that those who are truly temporary, i.e. those who are hired to perform a single job or to work for a limited time period, are ineligible to vote. Indiana Bottled Gas Co.,

128 NLRB 1441, fn. 4 (1960); Owens Corning Fiberglas Corp., 140 NLRB 1323 (1963). However, those who are retained beyond their scheduled termination date, and whose subsequent employment is for an indefinite period, are included in the unit. Orchard Industries, 118 NLRB 798, 799 (1958). Those who work for substantial periods and whose tenure thereafter is indefinite are also eligible to vote. Horizon House 1, Inc., 151 NLRB 766, 799 (1965).

In both Mon-Valley and Evergreen the Board evaluated the arguments that the disputed employees (Manpower trainees in the case of Mon-Valley and CETA employees in the case of Evergreen) should be excluded as temporary employees. In both cases, it determined that the fact that their employment was of indefinite duration did not justify their exclusion from the unit.

Examining the eligibility of the Return to the World of Work trainees under the community of interest standards, it is noted that they perform the same work as both the maintenance and construction employees, i.e. mopping, sweeping and construction work. It appears that at least some of them have worked with these employees in the past. Several permanent employees employed at both the commercial center and the housing companies are graduates of the Return to the World of Work program. Although the trainees are separately supervised, it is noted that they have been informed that they can expect to be fully integrated into the regular work force upon completing the program. Like unit employees, they are required to attend the monthly employee meetings conducted by the Employer. Their wages ($7.00 per hour) are comparable to those of the maintenance employees working at the commercial center

(approximately $8.00 per hour.) Although they do not currently enjoy any fringe benefits, it is noted that the construction employees, who the parties stipulated should be included in the unit, also do not receive fringe benefits.

With regard to their permanent status, although the requisition forms that were filled out at the time of their hire indicated that their employment would end on June 30, 1999, they have continued their employment well beyond that period. Notwithstanding these documents, it is clear from both the testimony of the Employer's witnesses and those of the Petitioner that it is the Employer's policy to place those employees who successfully complete the program in permanent positions. Although the program was scheduled to end on December 31, 1999, the Employer had no definite plans to terminate any of these employees. Thus, at worst, it can be said that their continued employment is indefinite. Moreover, the Employer appears to have informed some of the disputed employees that they will be placed in permanent positions.

In view of the above, I will include the Return to the World of Work employees in the unit.[14]

Florencio DeJesus

The Employer also maintains that Florencio DeJesus should be excluded from the unit as a temporary employee. The Petitioner contends he is a regular full time employee who possesses a community of interest with the other petitioned-for employees.

[14] With respect to Zachary Oliver, who Starks asserted stood a slim chance of being placed due to disciplinary problems, I find that the Employer has provided insufficient evidence to establish that he is a temporary employee. As earlier noted, he has been employed for approximately a year, and there is no

DeJesus began working for the Employer as a Return to the World of Work trainee in June 1998. Fraser asserted that DeJesus never graduated from the program. However, Starks, the supervisor of the Return to the World of Work employees, stated that DeJesus was no longer employed in that program at the time of the hearing. DeJesus, a parolee, testified that he graduated from the program in about December 1998, and was subsequently put to work in the maintenance department at the commercial center. In that capacity, he performed handyman work, sheetrocking, carpentry and related tasks. In about March, 1999, he failed a drug test that was being administered as a condition of his parole. He asserted that upon failing the drug test, he took a 90 day leave of absence so that he could undergo a rehabilitation program. However, he executed a letter dated March 9, 1999, prepared by Personnel Director Anglin, in which he stated he was resigning effective immediately.

DeJesus testified that in June 1999, upon completing the rehabilitation program, he returned to work in his old position in the maintenance department. However, in about September, 1999, he became ill and took another leave of absence. He did not return to work until about November 1999.

Fraser asserted that on the first few occasions that DeJesus attempted to return from this second leave of absence, Fraser informed DeJesus that there were no positions available for him. When DeJesus persisted in his efforts to return to work, Fraser relented and put him to work in a temporary light duty

---

evidence that the Employer has made any plans to terminate him or informed him that his employment will end in the near future.

position. He testified that he upon doing so, he informed DeJesus that he would be working on a temporary basis.

DeJesus, on the other hand, denied that Fraser informed him he would be working on a temporary basis upon his return to work. Rather, he maintained that Fraser only told him that he considered him a temporary employee on the day before he (DeJesus) testified. However, DeJesus admitted that shortly after returning from his medical leave in about November 1999, he was informed that Hampton, one of the Return to the World of Work trainees, had filled his position. He stated that recently Fraser implemented a new procedure under which he hands DeJesus or another maintenance employee a set of written work orders, and DeJesus or the other employee distributes the work orders among the maintenance employees.

The employment requisition form for DeJesus' most recent cycle of employment, dated November 19, 1999, indicated that he was a temporary employee whose employment would end on December 30, 1999. It appears from this document that DeJesus is being paid $7.00 per hour, the rate of pay received by the Return to the World of Work trainees. It is not clear whether he is enjoying any fringe benefits.

Based upon the record, it appears that the question of DeJesus' permanent status turns, in large part, upon matters of credibility, which if necessary to resolve, would be best left to the challenged ballot procedure. Moreover, an unfair labor practice charge is pending which alleges that on or about December 30, 1999, the Employer discharged DeJesus in violation of

Sections 8(a)(3) and (4) of the Act. His discharge will have to be resolved in that investigation, which may also raise the issue of whether he was a temporary employee at the time of his termination. In these circumstances, I will permit DeJesus to vote subject to challenge.

The superintendents

The Employer contends that the superintendents employed at the housing companies are Section 2(11) supervisors. The Petitioner maintains that they are statutory employees who should be included in the unit.

As earlier noted, the Employer appears to employ 9 building superintendents. Three of them work alone. The remaining superintendents work with staffs of various sizes. James Coleman is assisted in the upkeep of the buildings at which he works by 11 or 12 coworkers (two painters, one or two handymen and 8 porters.) The staffs that assist the remaining superintendents number between one and three employees.

Various documents containing job descriptions of the superintendents were submitted into evidence. Included among the responsibilities in the job description submitted by the Employer were "supervising" the maintenance staff, "implementing" work schedules and maintaining effective working relationships with union representatives.

Some of superintendents live rent-free at the buildings they maintain. However, at least one of them, Billy Bonilla, does not receive a rent-free apartment as part of his compensation. The record was generally lacking in detailed information concerning their wages. William Cathey testified that in

addition to his apartment he is paid a weekly salary of $365.00. However, it also appears that he both punches a card and fills out a time sheet.

As earlier noted, the superintendents' duties primarily consist of minor repairs and cleaning. Although they may ask a porter or handyman to assist them on a given task, the superintendents, with the possible exception of Coleman, spend the vast majority of their time maintaining the facilities, and spend little time overseeing the work of their coworkers. As earlier noted, the duties of the porters are routine, and they need little, if any, direction from the superintendents. At some of the properties, schedules have been posted for several years setting forth the tasks porters are to perform. It does not appear that most of the superintendents played any role in drawing up these schedules. However, Wayne Thomas, the property manager who oversees Coleman's work, asserted that he and Coleman jointly prepared the schedule of job duties for the porters that work with Coleman. With respect to the handymen, most of their assignments come, indirectly, from tenants who fill out work tickets requesting various repairs. Superintendents may distribute the tickets or the handymen may retrieve them on their own. Superintendents may also independently assign handymen or porters certain tasks. It appears that Coleman may do this more frequently than the other superintendents. However, his supervisor, property manager Wayne Thomas, spends most of his time at the facility, somewhat reducing the need for Coleman to take such initiative. Reginald Tinnin, one of the handymen who works with Coleman, stated that relatively little of his time is spent performing tasks requested by Coleman.

Coleman, on occasion, may arrange work tickets in a certain order. However, Tinnin stated that he often departs from the sequence of repairs set by Coleman and he has never been disciplined for doing so.

None of the superintendents have hired, fired or suspended any employees, and with the exception of Coleman, it does not appear that any have issued written warnings.[15] Thomas testified that "perhaps" Coleman had issued between 10 and 25 warnings in 1999. Thomas asserted that Coleman issued a warning for insubordination on his own. However, it appears that Coleman often confers with Thomas before writing up an employee. These warnings are placed in employees' personnel files. None of the warnings issued by Coleman were submitted into evidence. Thus, it is not clear whether any of these warnings resulted in personnel action without further investigation by his superiors.

Eduardo Recio, the superintendent at another property, signed a warning issued to employee Anthony Sanchez for absenteeism. However, the warning was prepared by his property manager and Recio merely executed the warning in the space for "witnesses." The warning was also signed by his property manager.

With regard to evaluations, it appears that the Employer, through its Personnel Director, has directed its property managers to work in conjunction with superintendents in evaluating employees. The Employer submitted a blank performance appraisal into evidence, and the appraisal contains a section for recommended wage increases. This section contains a space for setting forth

[15] Superintendent Cathey testified that about a week before the hearing, he was told he had the authority to issue warnings.

the size of the employee's last increase, and another space for answering the question, "Does proposed salary exceed the budget maximum." The form also contains a section for employee comments and comments by a reviewing official. Prior to 1999, it appears, CDR's Vice President of Operations was responsible for evaluating the housing company employees. No evaluations in which the superintendent played a role have been issued at this time. Recio testified that his property manager, Annette Holder, requested his opinion concerning the performance of one of his coworkers, and began preparing an evaluation based on what he had said. However, this evaluation has not been issued, and it was not submitted into evidence.

Notwithstanding the job description, there is no evidence that superintendents have handled any grievances, and at the housing company whose employees are represented by the Petitioner, superintendents are included in the unit.

Monthly meetings are held among the superintendents and CDR's Vice President of Operations. However, it is not clear what is discussed during those meetings. Superintendents also attend the monthly staff meetings.

Superintendents cannot grant time off or authorize overtime. Although Coleman draws up employee work schedules, he may not change an employee's hours without consulting with his property manager.

The purchasing authority of superintendents is limited. In emergency situations they may purchase items such as pipes and are reimbursed from the Employer's petty cash supply. Periodically, they prepare a laundry list of

cleaning or other sundry items needed for the upkeep of the property. The property manager generally reviews this list, striking those items he or she deems unnecessary. The list is then forwarded to the purchasing department.

It is well established that the burden of establishing supervisory status rests with the party alleging it. Bennett Industries, Inc., 313 NLRB 1363 (1993). Because supervisory employees are deprived of much of the protection the Act affords, the Board is careful not to construe supervisory status too broadly. Thus, the mere possession of the various types of authority set forth in Section 2(11) of the Act is insufficient to elevate employees to a supervisory level if, in the course of exercising these functions, they do not use independent judgment. Chevron U.S.A., Inc., 309 NLRB 59, 61 (1992). I find that the Employer has fallen short of its burden of establishing that the building superintendents are statutory supervisors.

In this regard, I initially note that three of the superintendents work alone, and a finding that they are Section 2(11) supervisors is, thus, clearly unwarranted. No superintendent has ever interviewed, hired, fired, suspended, transferred or promoted any employees. Only one, Coleman, has ever issued written warnings. However, the authority to issue written warnings does not establish supervisory status unless these warnings result in personnel action without further review by others. Hillhaven Rehabilitation Center, 325 NLRB 202, 203 (1997) enforcement denied in Rehabilitation and Health Center of Cape Coral v. NLRB, 178 F.3d 1296 (CA 6 1999); Northcrest Nursing Home, 313 NLRB 491, 498 (1993).

With respect to their alleged authority to evaluate employees, it is noted that no performance appraisals in which superintendents played a role have been issued. One superintendent was asked for his opinion concerning the work of a particular employee. However, it was the property manager that began preparing the evaluation, and this appraisal has not been finalized. Although the appraisals the Employer intends to utilize have a section for proposed salary increases, it is not clear that the superintendent will be completing this section. It is noted the individual completing this section is expected to know the size of the affected employee's last wage increase and whether the increase that is proposed exceeds "the budget maximum." There is no evidence that superintendents possess this knowledge. Even if superintendents do fill out this section, since the appraisal form contains a signature line for another reviewing official (whose position is not specified) the evidence falls short of establishing that the role the superintendents play in performing employee evaluations will be solely responsible for determining salary increases. Ten Broeck Commons, 320 NLRB 806, 813 (1996).

With regard to their direction of work, most of the superintendents exercise this authority infrequently, if at all. Porters' work assignments are predetermined. Cassis Management Corp., 323 NLRB 456, 458 (1997). The evidence is insufficient to establish that Coleman's occasional parceling out of work assignments involves the use of independent judgment. Cassis Management, supra at 458. The presence of his property manager at his

building further diminishes the significance of Coleman's oversight of his coworkers.

Similarly, the Board has held that superintendents' authority to purchase sundry items does not elevate them to a supervisory level. Elias Mallouk Realty Corp., 265 NLRB 1225, 1234 (1982). The fact that the property managers review the shopping lists drawn up by superintendents, and strike those items they deem unnecessary, further reduces the significance of the superintendents' responsibilities in this regard. Further, the possession of such authority, assuming it exists, is illustrative of managerial, not supervisory status. The Employer has not asserted that these employees are managerial.

With regard to their monthly meetings with CDR's Vice President of Operations, there has been no showing that personnel matters are discussed at these meetings. It is well established that secondary indicia, such as attending management meetings, do not, standing alone, confer supervisory status. J.C. Brock Corp., 314 NLRB 157, 159-160 (1994).

With respect to one of the several job descriptions submitted into evidence, the Board has held that such documents do not confer supervisory status if the authority set forth therein is never exercised and the evidence fails to establish a "genuine devolution" of said authority to the individuals in question. Meadon Screw Products, Co., 325 NLRB 762, 769 (1998).

Having found that the superintendents are not statutory supervisors, there can be little doubt that they share a community of interest with the porters and handymen. They perform many of the same duties as these employees,

work with them closely and are, like the porters and handymen, supervised by the property managers. The fact that some superintendents live rent free in the buildings in which they work does not, in my view, negate their overall community of interest with the porters and handymen. I shall therefore include them in the unit.

Accordingly, I find the following unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All building superintendents, porters, handymen, painters, construction workers, trainees in the "Return to the World of Work" program, and maintenance employees including maids, the HVAC employee and the engineer employed by the Employer at the following buildings, excluding all property managers, office clerical employees, guards and supervisors as defined in the Act:
>
> 721 Willoughby Avenue, 300 Vernon Avenue, 1921 Fulton Street, 260 Howard Avenue, 1, 3, 6, 8, 11, 12, 15 and 18 Albany Avenue, 28 and 40 McDonough Street, 11, 12, 37 and 39 Kingston Avenue, 305 Decatur Avenue, 260-280 Herkimer Street, 959 St. Marks Avenue, 257 Greene Avenue, 80 Clifton Place, 1360 Fulton Street and 1368 Fulton Street (the Commercial Center)

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently subject to the Board's Rules and Regulations. Eligible to vote are employees in the unit who were employed during the payroll period ending immediately preceding the date of this Decision,

including employees who did not work during that period because they were ill, on vacation or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States who are employed in the unit may vote if they appear in person or at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible to vote shall vote whether they desire to be represented for collective bargaining purposes by Local 966, International Brotherhood of Teamsters, AFL-CIO.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is hereby directed that within seven (7) days of the issuance of this Decision, four (4) copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the

undersigned who shall make the list available to all parties to the election. *North Macon Health Care Facility*, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, One MetroTech Center North-10th Floor (Corner of Jay Street and Myrtle Avenue), Brooklyn, New York 11201 on or before February 3, 2000. No extension of time to file the list may be granted, nor shall the filing of a request for review operate to stay the filing of such list except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

NOTICES OF ELECTION

Please be advised that the Board has adopted a rule requiring that election notices be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the nonposting of notices if it is responsible for the non-posting. An Employer shall be deemed to have received copies of the election notices unless it notifies the Regional office at least five working days prior to 12:01 a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the

Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570. This request must be received by February 10, 2000.

Dated at Brooklyn, New York, this 27th day of January, 2000.

/S/ ALVIN BLYER

_____

Alvin P. Blyer
Regional Director, Region 29
National Labor Relations Board
One MetroTech Center North, 10th Floor
Brooklyn, New York 11201

177-1642-0100
177-2463
177-8560-1000
177-8560-1500
362-6718
440-3325

Appendix A

Housing Company	Properties Owned
735 Willoughby Ave. Co. a/k/a Vernon Avenue Houses	721 Willoughby Ave. and 300 Vernon Avenue
Fulton Street Houses, LP	1921 Fulton Street and 260 Howard Avenue
Albany-Decatur Redevelopment Co. a/k/a Albany Houses	1, 3, 6, 8, 11, 12, 15 and 18 Albany Avenue
Bedford Stuyvesant NSA I Redevelopment Co. a/k/a NSA I Houses	28 and 40 McDonough Street 11, 12, 37 and 39 Kingston Ave. and 305 Decatur Ave.
Restore Housing Development Fund Corp a/k/a “Herkimer Street Houses	260-280 Herkimer Street

BSR Housing Development Fund Co., Inc. a/k/a St. Marks Avenue Houses	959 St. Marks Avenue
Greene Avenue Housing Development Fund Corp. a/k/a Greene Avenue Houses	257 Greene Avenue and 80 Clifton Place